

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
NORTHERN DIVISION  
IN ADMIRALTY

Civil Action No. 2:09-cv-00044-D

REGIONS BANK,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
M/Y WATER WITCH, her engines, boilers,	)	
generators, machinery, tools, tackle, masts,	)	
appurtenances, equipment, cables, rigging,	)	
apparel, fixtures, fishing permits, furniture	)	
and necessities,	)	
	)	
Defendant Vessel <i>In Rem</i>	)	<u>ORDER</u>
	)	
ESTATE OF JAMES CAMERON	)	
SCULLEY, INGRID ANN SCULLEY,	)	
JAMES GUSTOV SCULLEY, INGRID	)	
DIANE SCULLEY, SCULLEY	)	
BOATBUILDERS, INC., a GEORGIA	)	
CORPORATION,	)	
	)	
Defendants.	)	
	)	

On February 18, 2010, this court entered an Order granting Plaintiff's Motion for default judgment. The Order granted final default judgment against all defendants for plaintiff in the principal amount of \$1,375,173.43, interest of \$32,778.10 at the rate of 7.5%, late fees of \$2,436.72, and the costs of this action of \$350.00.

On September 20, 2013, the parties filed a joint motion, pursuant to Rule 60(b)(4) of the Federal Rules of Civil Procedure, requesting the court to vacate and modify the Order previously entered by the court.

Plaintiff appeared by its attorney, Andrew R. Bickwit, Johnson & Freedman, L.L.C., Atlanta, Georgia, and defendants appeared by and through their attorney, C. Everett Thompson, II, Thompson & Pureza, P.A., Elizabeth City, North Carolina.

In support of their motion, the parties showed unto the court the following:

- A. that the relief granted by the court was, in part, in opposite to the relief requested in plaintiff's complaint;
- B. that plaintiff's complaint alleged and sought relief in the form of an *in rem* action against the vessel, WATER WITCH, to perfect the security held by plaintiff pursuant to a senior ship's mortgage and to have said vessel seized and sold, thus applying the sale proceeds to the balance owed under the ship mortgage;
- C. that plaintiff's prayer for relief requested the following: a warrant to arrest the vessel; a declaratory judgment that the ship's mortgage was senior to all other claims; a declaration that defendants had no claim to the vessel; an order condemning and selling the vessel with proceeds applied to the note; and that no order be issued which would impair the right of plaintiff to seek a deficiency against decedent's estate;
- D. that plaintiff did not seek a monetary judgment against any defendant;
- E. that the Entry of Default entered by the clerk on September 16, 2009, was an entry of default *in rem*;
- F. that there was no entry of default as to defendants personally.
- G. that the court entered an order ordering the U.S. Marshall to seize and sell the vessel and its equipment at public auction;
- H. that the vessel was sold at public auction for the final sale price of \$217,000.00 which sale was confirmed by the court;

- I. that the court's Order entered final default judgment against all defendants for the principal amount of \$1,375,173.41 plus interest of \$32,778.10 at the rate of 7.5% interest, late fees of \$2,436.72 and the cost of this action in the amount of \$350.00; and
- J. that the court's Order entered final default judgment against all defendants although there was no claim for monetary judgment against all defendants in plaintiff's complaint.

The parties' joint motion requests that the court's Order of final default judgment be set aside as to all Defendants except the corporate defendant, Sculley Boatbuilders, Inc., a Georgia corporation. The motion further requests that the court modify the Order of final default judgment against Sculley Boatbuilders, Inc., to provide for a credit for the sale price of the vessel in the amount of \$217,000.00.

Based upon the foregoing and the request of the parties, it appears to this court that the motion should be allowed.

The parties' joint motion is GRANTED. It is ordered that the prior Judgment entered in this matter is vacated and void as to all Defendants except defendant Sculley Boatbuilders, Inc. It is furthered ordered that Sculley Boatbuilders, Inc., shall receive credit for the sale price of the vessel in the amount of \$217,000.00 toward the principal amount of said Judgment.

SO ORDERED. This the 26 day of September, 2013.

  
JAMES C. DEVER III  
Chief United States District Judge